

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUSTIN A. WADSWORTH,

Defendant.

Case Number: 4:20-cr-40045-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on a motion for return of property. (Doc. 84). Defendant Wadsworth expressly filed his motion under Federal Rule of Criminal Procedure 41(g). He seeks the return of \$3,807.00 in casino winnings that he claims was seized from his truck upon his arrest. The Government has responded to the motion stating that the \$3,807.00 was administratively forfeited. (Doc. 87).

Rule 41(g) provides that “[a] person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property’s return.” “[O]nce a defendant has been convicted, a motion under Rule 41(g) is deemed to initiate a *civil* equitable proceeding.” *United States v. Shaaban*, 602 F.3d 877, 878-79 (7th Cir. 2010) (emphasis in original). Such a civil action is subject to the Prisoner Litigation Reform Act (“PLRA”), Pub. L. No. 104-134, 110 Stat. 1321 (1996). *Shaaban*, 602 F.3d at 878-79; *United States v. Stevens*, 500 F.3d 625, 629 (7th Cir. 2007). Thus, the Court must observe the PLRA’s procedural requirements, including the imposition of a partial filing fee and merits review. The appropriate mechanism for doing this would be in a separate civil case where, if necessary, the criminal

defendant could raise other civil theories of relief. *See United States v. Norwood*, 602 F.3d 830, 832 (7th Cir. 2010); *Chairez v. United States*, 355 F.3d 1099, 1100 (7th Cir. 2004).

Accordingly, the Court **DENIES without prejudice** Wadsworth's Motion (Doc. 84) and **DIRECTS** the Clerk of Court to refile this motion as the complaint in a separate civil case. The complaint shall have a filing date of May 16, 2024. The Court will then proceed to assess the proper PLRA filing fee and conduct a preliminary review of the new case. *See* 28 U.S.C. §§ 1915(b) & 1915(a).

IT IS SO ORDERED.
DATED: June 20, 2024

s/ J. Phil Gilbert

J. PHIL GILBERT
DISTRICT JUDGE